

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOSEPH G. RHODES.,)	CASE NO. 1:08 CV 628
)	
Plaintiff,)	JUDGE DONALD C. NUGENT
)	
v)	MAGISTRATE JUDGE
)	NANCY A. VECCHIARELLI
ASSETCARE et al.,)	
)	
Defendant.)	ORDER

On August 20, 2008, Plaintiff, Joseph Rhodes ("Plaintiff"), *pro se*, filed a "Memorandum in Opposition to Defendant's Affirmative Defenses and Motion to Dismiss." (Doc.13.) Defendant AssetCare, Inc. ("AssetCare"). AssetCare responded with a "Motion to Strike Plaintiff's Memorandum in Opposition to Defendant's Affirmative Defenses and Motion to Dismiss." (Doc. 14.) Plaintiff then filed a memorandum in opposition to the motion to strike. (Doc. 16.) For the reasons stated below, AssetCare's motion to strike (Doc. 14) is GRANTED.

In the Memorandum in Opposition to Defendant's Affirmative Defenses and Motion to Dismiss, requests that the Court deny motion to dismiss allegedly filed by AssetCare and attempts to rebut AssetCare's affirmative defenses. However, AssetCare never filed a motion to dismiss in this action. Rather, AssetCare filed an Answer which simply pleads its affirmative defenses and contains a standard

"wherefore" clause requesting that the case be dismissed. (Doc.11.) As evidenced by AssetCare's own motion to strike, this wherefore clause is not and was not intended to be a motion to dismiss. Moreover, a reply to affirmative defenses is neither required nor proper under the Federal Rules of Civil Procedure. See Fed.R.Civ.P. 7(a) and 8(d). Therefore, Plaintiff's motion in opposition (Doc. 13) is nonresponsive to any pending motion and improperly before the Court.

Therefore, AssetCare's motion to strike is GRANTED.

IT IS SO ORDERED.

s/ Nancy A. Vecchiarelli
NANCY A. VECCHIARELLI
U.S. MAGISTRATE JUDGE

Date: September 12, 2008